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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re M. G., a Person Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
DEPARTMENT OF CHILDREN'S
SERVICES,

Plaintiff and Respondent,

v.

BARBARA B.,

Defendant and Appellant.

E031059

(Super.Ct.No. J171825)

OPINION

APPEAL from the Superior Court of San Bernardino County. Tara Reilly, Judge.

Affirmed.

Kate M. Chandler, under appointment by the Court of Appeal, for Defendant and
Appellant.

Alan K. Marks, County Counsel, Julie J. Surber and Paymon Bidari, Deputy County
Counsel, for Plaintiff and Respondent.

Sharon S. Rollo, under appointment by the Court of Appeal, for Minor.

The mother of the minor appeals from a Welfare and Institutions Code section 366.26¹ order terminating her parental rights and placing the minor up for adoption. The mother argues that (1) adoption is not likely in light of the minor's medical problems, and (2) the court failed to consider sibling visitation as required by section 362.1. We disagree and affirm, concluding that (1) adoption was likely given that the minor's medical condition had stabilized and the San Bernardino County Department of Children's Services had already found a willing adoptive parent who was knowledgeable about the minor's medical issues, and (2) the mother lacks standing to raise the issue of sibling visitation.

STATEMENT OF FACTS

The department initially took custody of the minor after she had been born premature. At that time, the minor and the mother both tested positive for cocaine, and the mother admitted that she had been using illegal substances. Needless to say, the minor suffered from several serious medical conditions, including possible fetal alcohol syndrome, that required specialized care and created the potential for future developmental problems. The mother was referred to an in-patient substance abuse program and the minor was placed in a foster home for medically fragile children.

The mother admitted to having given birth to eight children total, two of which died shortly after birth. The three oldest remaining siblings (one was an adult, and the others were ages 14 and 16 at the time the petition was filed) had been adopted by their maternal grandparents following a prior referral to the department. The mother gave the maternal

¹ All further statutory references will be to the Welfare and Institutions Code unless
[footnote continued on next page]

grandfather custody of the remaining two siblings (ages three and seven at the time of the instant petition) when the mother entered the substance abuse program.

As a result of the mother's failure to complete a substance abuse program, the department recommended the termination of reunification services at the six-month review. An attached adoption assessment indicated that the minor was likely to be adopted, but would be difficult to place due to her medical conditions. The court indicated that it had reviewed the department's report and adopted the department's recommendations.

The department subsequently requested a continuance of 90 days in order to recruit a concurrent placement family for the minor. The department insisted, however, that the minor was adoptable. An updated adoption assessment indicated that the minor had made significant developmental strides, her medical issues had stabilized, and she enjoyed good general health. The assessment also claimed that the minor's profile had been shared with state, regional, and national adoption exchanges, and that several home studies had been received and were being reviewed. The continuance was granted. Within a month, a suitable home had been selected and the minor was relocated.

Following the new placement, sibling visitation was arranged. Three visits were scheduled, but only one was kept. At that visit, the minor cried when one of the siblings tried to interact with her. The other sibling who was present made no attempt to interact with the minor. The department reported that the minor had never lived with her siblings, did not know them, and had no relationship with them.

[footnote continued from previous page]
otherwise indicated.

At the section 366.26 hearing, the department recommended the termination of parental rights and the adoption by the new placement family, noting that the minor had already adjusted to the new home and appeared bonded and happy with her new family. An updated adoption assessment indicated that the minor's only remaining health problems were gastric reflux, which was treatable with medication, and breathing treatments as needed, and that the minor had bonded with the adoptive family. It also indicated that the adoptive mother, a nursing assistant at a local hospital, was committed to providing for the minor, eager to proceed with the adoption, and "knowledgeable about [the minor's] birth mother's problem with drugs and alcoholism and the risk of future problems, which might manifest as a result of this adverse background and other unknown factors." The court ultimately found that the minor was likely to be adopted and terminated parental rights.

DISCUSSION

1. *Adoptability*

"If the court determines, based on the [adoption assessment], and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption." (§ 366.26, subd. (c)(1).) The likelihood of adoption is generally determined by the characteristics of the minor, such as age, physical condition, and emotional state. (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154.) The evidence on this issue must be so clear as to leave no substantial doubt; it must command the unhesitating assent of every reasonable mind. (*In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1205.) On appeal, this finding is reviewed for substantial evidence. (*In re Lukas B.*, at p. 1154.)

In this case, the mother argues that it is unlikely the minor will be successfully adopted due to the minor's existing medical problems and potential future difficulties. The mother also notes that an adoption may be rescinded due to the failure to disclose material information and, at this point, nobody knows the extent of the minor's developmental problems.

We find these arguments to be unpersuasive. First, the majority of the minor's medical problems have been resolved. Second, the minor is still just an infant and thus capable of developing properly if given the appropriate care. Third, and most importantly, the department has already found a willing and eager adoptive family. Although the existence of a willing adoptive family is generally not sufficient on its own to support a finding of adoptability (see *In re Jerome D.*, *supra*, 84 Cal.App.4th at p. 1205), it is a strong indicator that the minor is adoptable and will be adopted by somebody (*In re Lukas B.*, *supra*, 79 Cal.App.4th at p. 1154). The adoptive mother in this case is a health care worker who is fully aware of the minor's potential medical problems and developmental difficulties, thus it seems highly unlikely that this adoption will fail.

2. *Sibling Visitation*

The mother also argues that the trial court failed to consider sibling visitation as required by section 362.1. First, the mother lacks standing to raise this issue. (See, e.g., *In re Frank L.* (2000) 81 Cal.App.4th 700, 703.) Second, section 362.1 is wholly inapplicable. Section 362.1 merely requires that sibling visitation be included in orders "placing a child in foster care, and ordering reunification services" (§ 362.1, subd. (a)), and in legal permanency plans "[w]hen reunification services are not ordered" (§ 362.1, subd.

(b)). The instant section 366.26 order is obviously not an order “placing a child in foster care, and ordering reunification services,” and reunification services were in fact ordered in this case. Third, sibling visitation was actually attempted, unsuccessfully; thus, the court clearly gave the issue some consideration.

DISPOSITION

The judgment is affirmed.

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/s/ McKinster
J.

We concur:

/s/ Ramirez
P. J.

/s/ Gaut
J.